

## CHAPTER OVERVIEW

This chapter describes who may have access to confidential information within records and the manner in which the information may be shared.

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#### Attachment A: Coversheet for Release of CA/N Records

The following guidelines relate to the sharing of confidential information maintained by the Division. Staff shall share confidential information using the guidelines provided for the specific type of information sought.

### 2.1 CA/N Investigations/Family Assessments

Information pursuant to Section 210.150 RSMo, may be shared with the following agencies and individuals as described.

The confidentiality of the reporter is essential. Therefore, prior to sharing the reporter's name, supervisory consultation and approval is necessary.

A. Court Adjudicated, **Preponderance of Evidence**, and Probable Cause findings are shared only with:

1. Appropriate federal, state, or local government agencies with a need for such information in order to carry out its responsibility under the law to protect children from CA/N;
2. A physician or a designated agent may request information for a physician examining a child;
3. Appropriate staff of the Division;
4. Any child named as a victim, or a legal representative, or guardian of such person when such person is a minor;

NOTE: The Domestic Violence Section of the case record is to remain confidential unless otherwise ordered by the court.
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5. Any alleged perpetrator (Records shall not be released to alleged perpetrators if there is a criminal investigation until an indictment has been returned by a Grand Jury to stand trial, the prosecutor has filed charges or the charges are dropped/dismissed.);
6. A Grand Jury, Juvenile Officer, Prosecuting Attorney, Law Enforcement Officer involved in the investigation of CA/N, Juvenile Court or other court conducting CA/N or child protective proceedings, and other government

entities with a need for such information in order to carry out its responsibilities under the law to protect children from CA/N;

7. Any person engaged in a bona fide research project, with the permission of the Director (identifying information can only be released with permission of the child or the child's parent or guardian;
  8. Any child care facility or any public or private agency providing care of a child may request screening of employees and volunteers;
  9. Any person who inquires about a specific child care facility, except no identifying information shall be released;
  10. Any state agency acting pursuant to statutes regarding a license, which provides care or services to children; and
  11. Any child fatality review panel.
- B. Unsubstantiated and Family Assessment records retained by the Division are to be shared only with:
1. Appropriate Division staff;
  2. Any child named in the report as a victim, or a legal representative or the parent or guardian;

NOTE: The Domestic Violence Section of the case record is to remain confidential unless otherwise ordered by the court.
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3. Any alleged perpetrator (however no reports shall be released with pending criminal charges until an indictment has been returned by a Grand Jury to stand trial, the prosecutor has filed charges or the charges have been dropped/dismissed);
4. Child fatality review panels
5. Criminal justice agencies including the juvenile office;
6. Multidisciplinary agencies, including a physician or designee who is providing services to the child or family, with the consent of the parent or guardian or legal representative of the child (during a Family Assessment information may be shared without the parents' permission); or
7. Persons engaged in research, with no identifying information, unless written permission is obtained from the child or parent/guardian.
8. If a report is unsubstantiated, the reporter may request that the Children's Division refer the report to the Office of the Child Advocate. If requested,

staff shall forward a copy of the report to the Office of the Child Advocate Director.

Related Subject: Section 5, Chapter 2, Attachment B Office of Child Advocate.

### **Legal Representatives**

1. Juvenile Courts and Juvenile Officers.
  - a) Share information without a subpoena with appropriate Juvenile Court personnel and attorneys who represent the court.
  - b) Volunteer advocates who are designated by the Court shall be provided with all reports relevant to the case and shall have access to records relating to the child or his family members. The reporter's name shall not be shared.
2. Probation and Parole/Pre-sentence Investigator
  - a) Share information with Probation and Parole Officers and Pre-sentence Investigators under the following circumstances:
    - When an alleged perpetrator has been found guilty of a criminal charge of child abuse or neglect;
    - When an alleged perpetrator has been arrested for an offense of child abuse or neglect;
    - When an alleged perpetrator is on parole/probation for a conviction of child abuse and neglect and part of the terms of his/her parole/probation is to cooperate with a Children's Division (CD) treatment plan.

NOTE: Do not share identifying information on the reporter.

### **Legal Proceedings**

1. Share information regarding case activity with the court during a Juvenile Court Hearing.
2. Cooperate with the Grand Juries and other courts conducting abuse/neglect or child protection proceedings. A subpoena is not necessary to provide testimony. However, staff may require a subpoena if they do not believe it is appropriate for them to testify.

Testify after stating to the Court; **“The record is confidential as prescribed by Section 210.150 RSMo and I may only disclose it if ordered to do so by the court.”**

NOTE: If requested by someone who has access to the record, i.e., a parent, staff should provide the deposition, unless he/she does not believe it is appropriate.

If a deposition is requested by a person who does not have statutory right to that information, or staff do not believe it is appropriate for them to provide a deposition, staff should send the request through supervisory lines to request assistance from the Division of Legal Services.

3. Release the name of the reporter to the Court in the presence of any person not designated to have access to this name, only after;
  - a. Informing the Court that such information is confidential as prescribed in Section 210.150 RSMo.
  - b. Being court ordered to release reporter's name.

NOTE: If staff anticipates, prior to a court hearing, that the release of the reporter's name will be ordered consult with Division of Legal Services through supervisory lines. This will allow for discussion as to any problems which may be caused because of the release of the reporter's name.

- c. Notify supervisor immediately after the court hearing of the court order requiring release of reporter's name and record information in the case record.
4. Do not give Miranda Warnings, as CD staff are not classified as Law Enforcement Officials and do not have the alleged perpetrator in custody at the time of the investigation.
5. Do not claim privileged communication, as communications between Division staff and clients when conducting a CA/N investigation are not considered a privileged communication.

Related Subject: Section 7, Glossary, “Privileged Communication”

NOTE: Reference: State vs. Brydon, Missouri Court of Appeals, Western Division. Cases involving issues other than those identified in this appeals decision may generate differing opinions in other courts. Thus, this interpretation can only apply to CA/N investigations.

1. Share a copy of the CA/N Investigation/Family Assessment report with the Medical Examiner or Coroner in the event a child has died as a result of Child Abuse/Neglect

## **Reporters of CA/N**

### **Mandated Reporters**

Division staff are required to initiate contact with every mandated reporter to provide feedback about the family within five (5) days of concluding the report. Earlier contact may be appropriate for feedback to the reporter prior to the conclusion. Contact should generally be made by phone or in person and should be documented in the record.

When the mandated reporter will continue to have on-going, professional contact with the family, he/she should be considered as a multidisciplinary team member. The Division should share information that would be helpful for the reporter's efforts to offer support to the family

The Division may share the following information:

1. The date the Investigation/Family Assessment was completed;
2. Conclusion of the Investigation/Family Assessment;
3. Facts utilized to reach the conclusion of the Investigation/Family Assessment;
4. Whether a referral for Family-Centered Services or to other community services was made;
5. Treatment plan; and
6. Progress of the child/family.

Mandated reporters who will not have on-going, professional contact with the child/family may receive the following information verbally or in writing:

1. Date the Investigation/Family Assessment was completed;
2. Conclusion of the Investigation/Family Assessment;
3. Facts utilized to reach the conclusion of the Investigation/Family Assessment;

Staff should exercise discretion as to how much information is shared depending on the mandated reporter's role with the family. Provide the

information to the reporter as soon as possible after the investigation is completed.

### **Other Reporters (Permissive)**

Any reporter who provides his/her name to the CA/N hotline shall be informed of their right to obtain information concerning the disposition of the report during their initial contact with the children's service worker. The reporter may also receive, if requested, findings and information concerning the case. The release of information shall be at the discretion of the director, based on the reporter's ability to assist in protecting the child or the potential harm to the child or other children in the family. The local office shall respond to the request within 45 days.

The Division may share the fact that the report is being/has been followed up.

### **Researchers**

1. Share information with any tenure-track or full-time research faculty member at an accredited institution of higher education, engaged in scholarly research, with permission of the Division Director. Prior to the release of any identifying information, the researcher must submit a plan for maintaining the confidentiality of the identifying information.
  - a) Correspondence from the Division Director will be provided to staff involved in the research as to the release of identifying information.
  - b) State purpose for the release of information and penalty for unauthorized dissemination of information (Class A Misdemeanor).
  - c) Refer inquiries regarding proposed research projects to the Office of the Division Director. Pre-planning with the local office is appropriate prior to submission of final proposal to Division Director.

### **News Media, Legislators, Students, the Public**

1. Share only information pertaining to statistics, theory, policy and practice. Do not share specific information regarding client situations.
2. The release of findings or information about cases which resulted in a child fatality, or near fatality, is at the sole discretion of the Director of the Department of Social Services, based upon a review of the potential harm to other children within the immediate family. Inquiries shall be referred to Central Office.

### **Physicians or Designated Agents**

1. Share appropriate information with a physician or designated agent who reasonably believes that the child being examined may be abused or neglected.

Unsubstantiated reports and Family Assessment cases may only be shared with the consent of the child's legal representative or parent/guardian. During a Family Assessment, information may be shared without the parents' permission.

NOTE: When a physician contacts Child Abuse or Neglect Hotline Unit or local office for information, call back and verify his/her identity. Provide information regarding the child being examined, and siblings of that child.

2. State purpose for the release of the information and penalty for unauthorized dissemination of information (Class A Misdemeanor).

### **Law Enforcement Officials or Prosecuting Attorney**

1. Report child's injuries or disabilities from abuse or neglect to Law Enforcement Authority, if appropriate.
2. Determine, based on specific case situations, to whom such information shall be supplied.
3. Share information including reporter's name, if appropriate and necessary, to conduct a co-investigation.

NOTE: In any event, the Juvenile Officer must be notified.

4. Share any record with Law Enforcement or Prosecuting Attorney, including conclusions of **Preponderance of Evidence**, Probable Cause, Unsubstantiated reports, and Family Assessment cases.

### **Interdisciplinary/Multidisciplinary Teams**

1. Investigative/Family Assessment Teams
  - a) Share appropriate information, including reporter's name, if appropriate and necessary, with team members without consent of subjects.
  - b) Advise team members of confidentiality restrictions and penalties with respect to information they receive.



- c) Advise team members that information they provide may become available to client.

## 2. Treatment/Evaluation Teams

- a) Share information, including reporter's name, if appropriate and necessary, with team members who are directly involved in the treatment of subjects without written consent of subjects.
- b) Unsubstantiated reports and Family Assessment cases may be provided to treatment teams with the consent of the parent, guardian or legal representative of the child.
- c) Advise team members of confidentiality restrictions and penalties with respect to information they receive.
- d) Advise team members that information they provide may become available to client.

## 3. Family Support Team

- a) Share appropriate information.
- b) Obtain signed confidentiality statement from each non-agency team member.

## 4. Child Fatality Review Panels

- a) Share all records including unsubstantiated reports and Family Assessment cases.

## 5. Domestic Violence Shelter/Service Providers

- a) Obtain signed release of information from the adult victim prior to sharing information with domestic violence service providers.
- b) Share information, if appropriate and necessary, with domestic violence service providers who are directly involved in the service of subjects, according to local procedures. These procedures should be sensitive to the need for shelter staff to protect the whereabouts of the victim by releasing information only to Children's Services staff directly serving the child and/or adult victim. Suggestions include; developing positive working relationships, and establishing a code that can be used to identify staff to providers.

### **Multidisciplinary Provider**

1. Share appropriate information, if provider of professional treatment services for a specified child, and is under contract with the Division. If provider is not under contract with the Division, obtain the parents' permission to release information. Unsubstantiated and Family Assessment reports may only be shared with the consent of the parent, guardian, or legal representative of the child. During a Family Assessment, information may be shared without the parents' permission.

### **Interstate Requests**

1. Share appropriate information from **preponderance of evidence or** probable cause records without consent of subject with an out-of-state protective service agency if it can be determined that the information has been requested as the result of a report of CA/N and is necessary to determine the disposition of the investigation.

Unsubstantiated and Family Assessment records may not be shared.

Family histories, or information regarding treatment with a particular client requires an authorization for release of information by the client. This does not apply to requests for studies for family resource providers or when the requesting agency provides a court order documenting that they have legal custody of the child.

### **Other CD Employees**

1. Share with appropriate CD staff only that information which they must have to perform their specific duty (i.e., staff conducting administrative hearings, licensing staff, monitoring staff, legal staff, etc.)

Sharing is not to be done over lunch, coffee break, or in halls or elevators where names may be overheard by others.

### **Child Caring Facilities**

Requests from the Chief Administrative Officers of facilities listed below for a CA/N review on any employee, volunteer or prospective employee or volunteer should be made in writing to the Deputy Director of Children's Services. These screenings are conducted by the Background Screening and Investigation Unit (BSIU), based in Central Office. The response shall not include any identifying information regarding any person other than the alleged perpetrator.

1. Any child care home;
2. Any child care center
3. Any child placing agency

4. Any residential care facility, including group homes;
5. Juvenile Courts, public or private elementary schools, public or private secondary schools, or any other public or private agency exercising temporary supervision over a child or providing or having care or custody of a child.
6. Any state agency when that agency is following statute which requires a license of any person, institution, or agency which provides care for, or services to children.
7. Agencies or businesses which provide training, place or recommend persons for employment or volunteers, in positions where they will provide services or care for children.

### **Individual Requests – Child Care Facilities**

Individuals may inquire regarding a specific child caring facility, child placing agency, residential care facility, public and private elementary and secondary schools, juvenile court, or other state agency. Information available is limited to the category of abuse/neglect, the conclusion (**Preponderance of Evidence**, Probable Cause or Reason to Suspect and Court Adjudicated only) and shall not include any identifying information pertaining to any person contained in the report. It is appropriate to release the above information regardless of whether the facility or an employee of the facility or school is named as perpetrator. Individuals will obtain this information from the local county office.

Individuals should be referred to Department of Health and Senior Services (DHSS) Child Care Licensing or the Residential Program Unit to review the public record on any licensed facility. In addition, Child Care Licensing through the DHSS, has resource and referral agencies which can supply information on child care facilities.

If an employer inquires about an employee who has a substantiated report, particularly asking for recommendations regarding personnel action, staff should tell the employer the Division does not make such recommendations and cannot discuss the report with them. Their employer should be referred to the Department of Health and Senior Services Child Care Licensing or Residential Program Unit staff.

### **Schools**

Section 210.167 of the Child Abuse Law, states that when Section 167.031 RSMo. (mandatory school attendance) is violated, i.e., **Preponderance of**

**Evidence or Probable Cause Educational Neglect findings** (or Family Assessment Services Needed) the following should occur:

1. Send **Preponderance of Evidence**, Probable Cause (and Family Assessment Services Needed) reports to the school district in which the child resides. The school district may refer public school violations of Section 167.031 to the prosecuting attorney.
  - a) Send a copy of the completed investigation (or Family Assessment) when educational neglect is the only basis for our involvement (with the reporter's name blanked out); or
  - b) Send a summary of the completed report when the report involves other allegations and findings (omitting the reporter's name).

### **Penalty for Unauthorized Dissemination of Information**

For physicians, researchers, child care facilities, and persons inquiring about a child care facility, staff shall advise the requestor of the purpose for which the information is being released, that such information shall be used only for the purpose for which the information was released, and of the penalties for unauthorized dissemination of information (Class A Misdemeanor) Section 2310.150.1 RSMo.

### **Duty To Warn**

Staff have an obligation to warn the intended victim of violence if that victim is readily identifiable. Therefore, if staff are aware of threats to any adult, they must take affirmative steps to warn that person. These steps can include; notification of the threat, referrals for shelter, contact with Law Enforcement, etc.

## **2.2 Treatment Records**

The Division will allow the following persons access to information in treatment records:

- Any subject for whom a record exists. This will usually be the parent/caretaker in whose name a record has been established;
- The legal spouse of the person in whose name the record exists, provided he/she resides with the person; and
- The parent of the children in the treatment case, provided he/she resides in the home with the person in whose name the record exists.

Policy also allows the subject to designate an attorney to act on his/her behalf in obtaining treatment records. The attorney must provide written authorization from the subject that allows access to the case record.

When receiving drug and alcohol treatment material, staff will need to ask the provider if the information is covered under the federal drug and alcohol statutes.

### **2.3 Family-Centered Out-of-Home Care Records**

The following persons may have access to information contained in out-of-home case records:

- A parent may have access to their own record (the case record that is established under their name);
- A parent may have access to the record which has been established for their child in out-of-home care;
- The child in the custody of CD in whose name a case record has been established. If there is a particular concern regarding the child's access to the record, the Children's Service Worker shall seek guidance through supervisory channels;
- The child in the legal custody of another person where the court has ordered CD to supervise. The Children's Service Worker shall contact the legal custodian to determine if it is appropriate for the child to view the record;
- The out-of-home care provider may have access to the record which has been established for a child in the custody of CD when the child is placed in the out-of-home care provider's home or facility;
- An emancipated minor, or person over age 18, may have access to the record that was established for him/her while in out-of-home care; and
- This person may also have information from the parent's records for the time period the child received services prior to, during, and following the placement.

### **2.4 Procedures for Sharing Information**

Section 210.150 defines persons who may receive copies of records from the Central Registry (includes court adjudicated, **preponderance of evidence**, probable cause, and criminal convictions) and those with access to unsubstantiated records and Family Assessment cases.

Related Subject: Section 5, Chapter 2, CA/N Investigations.
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1. Receive request by telephone, letter, or in person to view record from a "Subject" or his/her attorney.

- Explain in writing, in-person, or by telephone that an appointment may be made to view the record or a copy of the record may be provided to the "Subject" or his/her attorney.

NOTE: Staff should clarify with the subject whether he/she wants to review the record on a specific incident, or also prior incidents, in order to adequately prepare the record.

- Staff may allow immediate access to the subject or his/her attorney if the case is prepared. However, if the case is not ready, set a specific appointment within ten (10) working days and request that the subject contact the office he/she does not intend to keep the appointment.

In most situations a copy of the record will be given to the subject or attorney in person. A copy of the record will be made available upon request. CD will furnish one copy of the record. Any additional copies will be made at the expense of the person requesting the copy. In most situations, a copy of the record will be given to the subject or attorney in person.

- Exceptions which allow mailing a copy include: the subject lives out of state and is not able to pick up a copy, incapacitation of the subject or other reasons in the judgment of DFS staff which preclude the subject from picking up a copy. The envelope in which the copy is mailed shall be marked "CONFIDENTIAL".
- A cover document for the released record shall contain the following statement:

DO NOT RE-RELEASE THIS CONFIDENTIAL DOCUMENT TO ANYONE EVEN IF THEY ARE ALSO AUTHORIZED TO OBTAIN A COPY OF THIS DOCUMENT FROM THE DIVISION. PLEASE DIRECT ALL REQUESTS FOR CONFIDENTIAL RECORDS TO THE CHILDREN'S DIVISION.

- A subject's attorney must have a written letter of authorization signed by the subject prior to the release of the information, unless a court order has been issued which authorizes release of the information to the attorney. Retain the authorizing document in the case record.
- 2) If the subject or his/her attorney comes to the office by appointment he/she must present adequate identification prior to seeing the record.
  - 3) Copy the record and block from the copy, prior to review, the name and all identifying information regarding the reporter, for reasons of confidentiality. This copy may be given to the subject or his/her attorney.

NOTE: Alleged perpetrators and their attorneys shall not receive any records when the crime is under investigation or the prosecutor is considering filing charges.

CA/N records are released when an indictment is returned by the Grand Jury to stand trial, an information is filed, or the charges are dropped/dismissed. An information is filed following the preliminary hearing when the Associate Circuit Judge binds the perpetrator (defendant) over for trial in the Circuit Court (for misdemeanors and information can be filed in Associate Court formally charging the misdemeanor).

Statute 211.321, RSMo, prohibits Juvenile Court Records and Law Enforcement records from being open to inspection, except by order of the court. Information received from the Juvenile Court and Law Enforcement that is included in CD family records will not be shared with the subjects, attorney, or their designee. The subject, their designee, or attorney requesting this information shall be referred to the Juvenile Court or Law Enforcement Agency to obtain a copy of these materials.

Federal law prohibits the release of information which is obtained from a federally funded drug/alcohol facility. This information shall not be released to any individual or agency, except a child fatality review team, without written consent of the individual receiving treatment, the agency providing the service, or a court order. When receiving drug and alcohol treatment material, staff will need to ask the provider if the information is covered under the federal drug and alcohol statutes.

If an employer inquires about an employee who has a CA/N report with a "Preponderance of Evidence" or "Probable Cause" finding, asking particularly for recommendations regarding Personnel action, staff should tell the employer the Division does not make such recommendations and can not discuss the report with them. The employer should be referred to the Department of Health and Senior Services, Child Care Licensing, or Residential Program Unit staff.

- If the subject or his/her attorney wishes to read the record in the office, this should be done in privacy, but in the presence of the local office designee.
- The initial copy of the record will be furnished at the expense of CD. If additional copies are needed by the subject, he/she should use their copy to make copies at their own expense.

- 4) Document within one (1) working day, in the case narrative the time, place and person with whom the record was shared and material copied.
- 5) Notify the custodial parent if a non-custodial parent requests to view the record.
- 6) Information in the case record will be shared with minor children in accordance with the following guidelines.
  - If the child is in the custody of CD, CD has the right to determine if the child should see the record. Request guidance from the court if there is a particular concern.
  - If the child is in the legal custody of another person (i.e., parent, guardian) contact that person to determine whether they want the child to view the record.
  - If the child is an emancipated minor share the record, as required by law
- 7) Staff shall determine if release of identifying information for any person named in the report, such as the child, a parent/guardian, witness, or collateral may place a person's life or safety in danger.
  - During the investigation, staff should document in the record if there are situations, involving the persons named above, that may place danger if the information is released to any person with a right to the information.
  - In addition, staff should document in the record if they become aware of situations that may place a person name in the report in danger. This may include awareness of domestic violence, ex-parte orders, or other situations which verify a potentially dangerous situation.
  - The county designee shall use judgment, based on the above, regarding non-release of identifying information. Document in the record the reasons for not releasing the identifying information along with any available verification.

#### **2.4.1 Exceptions to a Person's Right of Access**

Access to case record information by a subject may not be in the best interest of the child/family if any of the following situations exist:

- Repeated harassment calls by a parent or spouse;
- Documentation of previous physical abuse by a parent or spouse;



- Documentation of domestic violence in household and/or threat or risk of harm to child(ren) and/or adult victim;
- Knowledge of criminal action by parent or spouse;
- Pending litigation such as dissolution of marriage.

Determine, with supervisory consultation, that there is a valid reason to believe that access to information by a "subject" could reasonably be detrimental to the physical or emotional well-being of the child or family group. With the Area Office's approval, withhold information and document the reason(s) in the narrative section if above circumstances exist.

## **2.5 Other Persons/Agencies Entitled to Case Record Information**

RELEASE OF INFORMATION IS PROHIBITED EXCEPT AS APPLIED IN THE FOLLOWING GUIDELINES:

### **2.5.1 Individuals**

#### CA/N investigation records:

Section 210.150(3), RSMo, allows the subject of a report access to the family record, and allows the subject to designate an attorney or name a designee in his/her behalf. The name of the CA/N reporter must not be released. A written authorization from the subject is required to share information with an attorney or designee.

Section 210.150(3), RSMo, also provides that "a parent or guardian" of a child who is a subject of a CA/N report has access to the information about the child with the limitation that the name of the reporter cannot be released.

#### When a Child is in Custody or Under Supervision of the Division:

Under Section 211.321, RSMo, persons having a legitimate interest in securing information about a specific child in the custody or under the supervision of the Division must secure the permission of the juvenile court holding jurisdiction for the information to be released.

Related Subject: Chapter 2, of this Section, Procedures for Sharing Information.
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#### Treatment Cases:

The subject for whom the record exists must provide written authorization to share the contents of the treatment record.

## 2.5.2 Courts and Law Enforcement

### Juvenile Courts

Information is shared without a subpoena with appropriate juvenile court personnel and attorneys who represent the court.

The Guardian ad Litem, when appointed to appear for and represent the child, and with proper identification, may have access to the same information as the juvenile court.

Volunteer advocates, who are designated by the court, shall be provided with all reports relevant to the family and shall have access to all records relating to the child or his family members.

### Courts in Missouri Other Than Juvenile Courts

Staff shall appear in courts outside juvenile court if a subpoena has been served for the person and/or for the record. (Subpoenas for the record are addressed to the county director.)

NOTE: Upon being called to testify, staff should state to the judge the following: **"The information in the record is confidential as provided by section 210.150 of the Revised Statutes of Missouri and I may only disclose it if ordered to do so by the court."**

If there are any questions about how to respond to a non-juvenile court subpoena, seek assistance from the Division of Legal Services through supervisory lines.

When the person is subpoenaed, the individual may take the record and/or notes to court with a subpoena, but must be aware that the judge and/or the attorneys may view the record and/or notes and cross-examine on the entire contents.

The family record or a copy of it may be left with the court upon verbal order of the judge.

Upon return to the local office, the Children's Service Worker should complete an Inter-Office Communication (IOC) to the Circuit Manager with a copy for the family file including the following information:

- Identifying information;
- Date of the hearing; and

- A statement that the record was retained by the court upon its order in the hearing.

#### Criminal Charges

Criminal charges may be brought against a person with whom CD is working. In the course of prosecution, a CD record and/or worker may be subpoenaed.

The CD worker will fully cooperate with the court and testify if ordered to do so. See above for statement to be given to court before testifying.

#### Courts in Other States

Honor the subpoena only after consultation with the Division of Legal Services through supervisory lines.

#### Grand Jury Investigations

Section 210.150(4), RSMo, provides that information contained in CA/N records is available to grand juries.

#### Child Custody Proceedings

Section 210.150.2(6), RSMo, provides that juvenile court or other court conducting abuse or neglect or child proceedings or child custody proceedings shall have access to investigation records contained in the central registry.

#### Medical Examiner or Coroner

In the event a child has died as a result of CA/N, a copy of the CA/N investigative report will be made available to the medical examiner or coroner.

#### Law Enforcement Officials or Prosecuting Attorney

Section 210.150(4), RSMo, provides that information contained in CA/N records is available to law enforcement officials or a prosecuting attorney involved in the investigation of child abuse or neglect.

Section 210.145(7), RSMo, states that "As a result of its investigation, the local office of the Division shall report a child's injuries or disabilities from abuse or neglect to the juvenile officer, and may make such report to the appropriate law enforcement authority." Each county office (at the

direction of the Circuit Manager or designee) shall decide to whom such reports will be made, i.e., the local prosecuting attorney, law enforcement officials, or juvenile court.

Related Subject: Section 2, Chapter 4, Investigation Response.
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### **2.5.3 CA/N Reporters**

#### Mandated Reporters

The Division may share only the following information:

- Status and conclusion of the investigation;
- The fact that the Division is providing services or referring the family to other community services; and,
- The fact that a referral is being made to the juvenile court, if applicable.

#### Other Reporters

The Division may only share the fact that the report is being/has been investigated.

### **2.5.4 Physicians**

Section 210.150, RSMo, allows information to be made available to "a physician or his designee who has before him a child whom he reasonably believes may be abused or neglected."

When a physician calls the Child Abuse and Neglect Hotline Unit or local office for information, staff will call back and verify identity. They may then provide information regarding the child before him, and siblings of that child.

### **2.5.5 Researchers**

Section 210.150, RSMo, allows information to be made available to "any person engaged in a bona fide research purpose with the permission of the Director..." No identifying information shall be shared.

Any inquiries regarding proposed research projects are to be referred to the Division Director. Proposals must be submitted in writing for the Director's approval in coordination with the local office in which the project would take place. Pre-planning with the local office is appropriate prior to submission of the final proposal to state office.

### **2.5.6 News Media, Legislators, Students, the Public**

The Division receives many inquiries regarding specific situations or for general information.

It is appropriate to share statistics, theory, policy and practice with anyone. This is general information with no identifying information regarding any specific client.

The Division does not share specific information regarding any family situation with the news media, legislators, public, or community groups (unless an individual is named as a designee by a subject) except relating to specific child recruitment for the purpose of finding an adoptive family. This sharing must be authorized by the juvenile court having jurisdiction over the child.

### **2.5.7 Interdisciplinary Teams**

Section 210.150(2), RSMo, allows information to be made available to interdisciplinary teams which are formed to assist the Division in investigation, evaluation and treatment of child abuse and neglect cases. This includes multidisciplinary providers under contract with the Division (CTS provider) for a child referred to the provider.

Such individuals, officials and agencies will be advised that the information they provide to the Division may become available to the family or its designee if they seek access to the family record.

### **2.5.8 Interstate Requests**

The Division may share information, without consent, with an out-of-state child protective service agency if it can be determined that the information has been requested as the result of a report of CA/N and is required for a determination of the disposition of that agency's investigation.

Family histories or information regarding an individual's treatment requires an authorization for release of information by the client. This does not apply to requests for studies for family resource providers or when the requesting agency shows that they have legal custody of the child.

### **2.5.9 Other Division Employees**

Information may be shared with appropriate Division staff, consultants, licensing representatives, monitoring and legal staff.

Case record information may be shared with Division staff as part of a Peer Record Review, Practice Development Review (PDR), or any other review that may be part of the Continuous Quality Improvement Process (CQI).

It must also be remembered that the Division and its employees have not only legal responsibility for confidentiality, but also ethical responsibility. The responsible handling of information dictates not only "what" we share and "to whom," but also "where." It is not to be done over lunch, coffee breaks, or in halls or elevators where names may be overheard by others. It must be remembered that the professional reputation of an agency is a collective reputation to which each individual contributes.

### **2.5.10 Minor Children**

Information in the family record will be shared with minor children in accordance with the following guidelines:

- If the child is in the custody of CD, we have a right to determine if the child should see the record. We may want to request guidance from the court if there is a particular concern.
- If the child is in the legal custody of another person (i.e., parent, guardian), then we should ask that person whether or not they want the child to view the record.
- If the child is an emancipated minor, then we should, under the law, share the record.

## **2.6 Out-of-Home Care Provider Records**

Records shall be established for the following out-of-home care providers who are licensed/approved, or under the supervision of CD:

- Foster family and foster family group homes;
- Relative/kinship providers;
- Respite care providers; and
- Adoptive families.

All information included in the above case records is confidential and available only to the applicants, excluding the following in licensed foster family and adoptive homes:

A licensing or approval summary (this is not a home study), which is open for public viewing. The summary shall include:

- The type of provider;

- Original licensure/approval date;
- Licensed/approved until when;
- Licensed for what:
  - Age;
  - Sex;
  - Race;
  - Handicapped;
  - Medical;
  - Behavior;
  - Number of children placed since original licensure/approval;
  - Number of children currently in the home; and
  - Training hours.

### **2.6.1 Foster Family Record Access**

If there is a request to view a foster family licensing record, the Circuit Manager or their designee will verify the identity of the individual requesting access and confirm that person's right to view the record.

NOTE: DATA SUPPORTING LICENSING IS A MATTER OF PUBLIC RECORD. INFORMATION PERTINENT TO LICENSURE IS THE ONLY PORTION OF THE RECORD THAT MAY BE READ. FOSTER CHILD INFORMATION AND CA/N INFORMATION ARE CONFIDENTIAL AND RECORDED ELSEWHERE.

The Circuit Manager or designee would then notify the reviewer as to the time and place of viewing. The Children's Service Worker will be present to conduct the viewing, and then record the facts of the viewing.

The Circuit Manager or designee then notifies the foster parent(s) of the viewing by whom and when, if they were not the reviewer.

### **2.6.2 Adoptive Family Record Access**

The Children's Service Worker shall inform adoptive parent(s), prospective or otherwise, of their right to view their adoptive records. Should an adoptive parent(s) request to view their record, the worker shall immediately acknowledge the receipt of their request with a letter including an appointment date and time to review the record no later than ten working days from original date of request.

At that appointment the Children's Service Worker shall verify the identity of the adoptive family and provide a private area for viewing. Do not permit review of any identifying information or non-identifying information of child or biological family if the adoption has been completed and the child and adoptive parent(s)' records have been combined.

NOTE: Background information about the child important to the child's placement should have been shared at the time of placement. If they wish confirmation of this information, complete the CS-50 and follow the appropriate steps.

The Children's Service Worker shall provide the adoptive family with a copy of the adoptive family assessment if they have never been given one. The worker will then document in the narrative, within five working days, the time, place and person with whom the record was reviewed and/or material copied.

NOTE: This does not effect the written procedures governing the summary of information shared with the prospective adoptive parent(s) at the time the child is placed.

### **2.6.3 Adopted Adult Requesting Information**

THIS PROCEDURE IS BASED ON 453.121, RSMo:

The adopted adult is the only person who can petition the court for a release of identifying information. Within ten days court will notify adoptive parent(s) and the child-placing agency of the request. The three month period for the biological parent search is triggered by the receipt of the request from the court.

Requests for the release of identifying information must be handled in such a way that the privacy of the adopted adult and the biological parents is protected at all times.

When the adopted adult makes a written request to the court, identifying information about biological parents or siblings is released only by the court which granted the adoption.

For adoptions initiated or completed prior to August 13, 1986, adoptive parent(s) must consent to the release of identifying information regarding the biological parents.



Notification of a biological parent must be done in a confidential, personal contact which does not include the use of the mail. This may include a contact by telephone.

Physicians, attorneys, and ministers or priests are not to be used as sources of information in locating biological parents. The information these persons may have from giving services to biological parents is considered a "privileged communication." See definitions in Section 7, Glossary/Reference.

Within three months of receipt of the court's referral, a report to the referring court must be made which includes statements that each biological parent located was given the following information:

- The nature of the identifying information to which the Division has access;
- The nature of any non-identifying information requested;
- The date of the request of the adopted adult;
- The right to file an affidavit with the court stating that the identifying information should be disclosed;
- The effect of failure to file an affidavit stating that the identifying information should be disclosed.

Any adopted adult whose adoption was completed in this state or whose biological parents had their parental rights terminated in the state may request the court to secure and disclose identifying information concerning a biological parent or an adult sibling.

Adopted adults and biological parents may use the "adoption registry" to indicate a desire to be contacted by the other. If a "match" occurs as a result of registration by both biological parents and the adopted adult with the "adoption information registry," information will be released by the registry.

Identifying information about an adult sibling may only be released by the court for urgent health reasons and with the consent of the adult sibling.

The Children's Service Worker will:

1. Receive written notice from court that an adopted adult has made written request for release of identifying information about biological parents or siblings.
  - a) If appropriate, report to court that the information requested was made by an adopted adult who made a similar request less than a

year from the date of current request and the biological parent/siblings could not be located at the time of the previous request.

- b) If appropriate, report to court that the adopted adult made a similar request within the last three years and the biological parent/siblings refused to consent to the release of identifying information.

NOTE: 453.121, RSMo, does not require another search until the above time frames have elapsed.

- 2. Review appropriate Division records to gather identifying information on adopted adult, biological parents, and adoptive parents.
- 3. Contact and secure written consent from adoptive parent(s) that the biological parent(s) may be notified of the adopted adult's request if adoption was initiated or completed prior to August 13, 1986.
  - a) Proceed to step 5 if proof is provided of the death of adoptive parent(s).
  - b) Proceed to step 5 if proof is provided that the adoptive parent(s) are incapacitated.

NOTE: An incapacitated person is defined in chapter 475, RSMo, as one who is unable by reason of any physical or mental condition to receive and evaluate information or to communicate decisions to such an extent that the person lacks the capacity to meet essential requirements for food, clothing, shelter, safety or other care such that serious physical injury, illness, or disease is likely to occur. Staff should request confirmation of this condition via psychological, medical or psychiatric reports or by viewing guardianship materials.

In the instance of physical incapacitation only, enough information must be given to the adoptive parent so that he/she understands the decision which is being requested and can make an informed decision about consent/no consent. The decision to consent/not consent must be given in writing. Assistance can be sought from another person (not the adopted adult) who can write for the adoptive parent. The authorization should be signed by the adoptive parent(s) or witnessed if a mark is used.

- c) Request assistance from other county offices if adoptive parents are known to have moved to another county.

- d) Request assistance from other state if adoptive parents are known to have moved to another state.
- 4. Contact and report to court that both adoptive parents, one adoptive parent if other is deceased, incapacitated, or the adult sibling has refused to give written consent and, therefore, the Division is unable to notify the biological parent or adult sibling.

NOTE: IF BOTH ADOPTIVE PARENTS, WHEN APPLICABLE, REFUSE TO GIVE WRITTEN CONSENT, STAFF SHALL NOT PROCEED FURTHER.

- 5. Make reasonable effort to notify the biological parents of the request of adopted adult through a "confidential and personal" contact (excludes use of the mail, but may include contact by telephone or face to face contact).

Related Subject: Section 4, Chapter 4, Attachment A, Locating the Non-Custodial Parent.

- a) Determine that either or both biological parents are deceased and document information source regarding this fact.
- b) Determine that a biological parent is unknown, after review and search of adoption records and other materials, and document the information source regarding this information.
- c) Determine that a biological parent is known, but cannot be located, and document the attempts to locate the specific biological parent.
- d) Determine that the biological parent has previously filed an affidavit with the court, if the biological parent indicates this has been done, and obtain identifying information about the court receiving the affidavit.
- e) Request assistance from another county office or state if biological parent is located out of state. Inform person contacted of need for confidential contact.
- 6. Inform the biological parent(s) at the time of notification of the following:
  - a) A report to the court will be made which includes the following information:
    - The nature of the identifying information contained in Division records.

- The nature of the non-identifying information contained in Division records.
  - The date of the request of the adopted adult.
  - That the Division has informed the biological parent of the necessity to file an affidavit with the court permitting the release of identifying information.
  - That the Division informed the biological parent of the effect of a failure to file an affidavit consenting to the release of identifying information.
- b) The necessity to file an affidavit with the court which granted the adoption stating that the identifying information should be disclosed.
- c) That identifying information will not be released to the adopted adult if the affidavit is not filed with the court.
- d) The identifying information will be released only by the court to the adopted adult.
7. File report with the court at the end of three months, or as soon as information is secured, which includes the following information:
- a) That each biological parent was/was not located.
- b) The nature of the identifying information requested.
- c) The date of the request of the adopted adult.
- d) The fact that the biological parent was informed of the right to file an affidavit with the court stating that identifying information should be disclosed.
- e) The fact that the biological parent was informed of the effect of a failure to file the affidavit.
- NOTE: "Effect of a failure" is that identifying information cannot be released to the adopted adult.
- f) A summary of the discussion with each biological parent, if applicable.
8. Record all activities on the CS-52 within ten working days in the adoptive parent(s) case record.

- a) File copies of reports and other correspondence in the "Release of Information" section of the case record.

#### **2.6.4 Release of Information in Adoptions**

##### **2.6.4.a Confirming the Identity of Individuals Requesting the Release of Information in Adoptions**

The methods selected to confirm the identity should be appropriate to the category of the individual making the request for release of information, and might include:

- Requesting the individual to supply a copy of a birth certificate or viewing the birth certificate and recording in narrative the birth certificate number.
- Requesting the individual to supply a copy of the marriage certificate or viewing the marriage certificate and recording the marriage certificate number.
- Requesting the individual to supply a copy of the adoption decree or viewing the decree and recording the court file number.
- Viewing the legal papers awarded to the guardian(s) of the person when non-identifying information is requested.

##### **2.6.4.b Searching for a Biological Parent**

DO NOT CONTACT THE ATTORNEY, PHYSICIAN, MINISTER OR PRIEST WHO ASSISTED IN THE ORIGINAL CONSENT FOR ADOPTION OR TERMINATION OF PARENTAL RIGHTS. CONTACTS BETWEEN THESE PERSONS AND BIOLOGICAL PARENTS IS CONSIDERED A PRIVILEGED COMMUNICATION AND IS NOT AVAILABLE AS AN AID IN SEARCHING FOR BIOLOGICAL PARENTS.

NOTE: Definition of reasonable effort to notify biological parents includes a minimum of two calls (by telephone and/or in person at last known address) at varying times between 7:00 a.m. and 9:00 p.m. at the location if the Children's Service Worker believes the biological parent has been identified and located. It is preferred that contact not be made at their place of employment unless this is the only avenue available for the confidential notification.

Any or all of the following steps in attempting to locate biological parents should be taken until the Children's Service Worker believes that the parent(s) cannot be located. These steps include:

- Reviewing all information provided by the court regarding the request of the adopted adult;
- Contacting the court for release of any last known information the court may have, if the request from the court does not include information regarding the biological parent;
- Examine the Division's **internal** sources of information such as:
  - Income Maintenance family records and information via IM workers;
  - Food stamp records and information via those workers;
  - Children's Services family records and information via those workers;
  - Appropriate DSS system screens (i.e., SCLR, DAPC, DCLT, IBTH, IDTH AND IDSS); and
  - The Adoption Information Registry in central office.

NOTE: If the Social Security Number (SSN) is known, the registry staff can assist in identifying the state in which the parent was last known to be located. Requests can then be forwarded to the child welfare office in that state for assistance in locating a biological parent. Information in the request should include any last known identifying information regarding the biological parent (i.e., date and place of birth, parents' names and, if possible, the mother's maiden name).

- Examine **external** sources of information such as:
  - Postmaster: The local post office will have a form for requesting address information. This may be completed and sent to the postmaster of the post office serving the biological parent's last known address.
  - Public utilities: If previous address and name on account are known.
  - Directories: Telephone, city street, trade, labor, and professional, etc.
  - Other public agencies in Missouri:

- ✓ Employment Security screens (IMES). Requests should be made to the local Employment Security office.
- ✓ Driver's Licensing Bureau, Division of Motor Vehicles. Requests should be made in writing, on Division letterhead, to the Driver's Licensing Bureau, 301 West High Street, Jefferson City, MO 65101. Include information regarding the person's name, date of birth and last known address (if known).
- Court/county records:

- ✓ County and city officials including recorders of deeds, county clerks, county commissioners, appraiser, collector, Board of Election, etc.

NOTE: The reason for the inquiry must not be released and workers are not required to give the reason since the above information is public and accessible to anyone.

- ✓ If the worker has reason to believe either of the biological parents are involved in any civil court proceedings, he/she may contact the local court to obtain the parent(s)'s last known address. If the court refers the worker to the attorney, contact the attorney. The attorney will not disclose information without the client's consent; but, even in such cases, it may lead to a voluntary contact by the biological parent with the worker. If the contact with the attorney does not produce the necessary information, the worker may make a contact with court again.
- Societies or lodges (Does not include church organizations).
- Bureau of Indian Affairs.

Requests should include all available identifying information about the adopted adult and the biological parents. Requests can be expedited if the tribe is known and included in the request. Requests on Division letterhead should be sent to:

Bureau of Indian Affairs  
Eastern Area Office  
1951 Constitution Ave., N.W.

Washington, DC 20245  
(202) 343-5582

NOTE: Under Federal law an adopted Indian child at age 18 has the right, upon application, to be informed of the following: the tribal affiliation, if any; the names of the biological parents; and any other information necessary to protect any rights flowing from the individual's tribal membership.

- Missouri Department of Corrections, if you have reason to believe the biological parent is or ever has been in prison. Requests should be made to the facility holding the individual.
- Missouri Department of Mental Health, if you have reason to believe the biological parent has been or is currently a recipient of their services. Requests should be made to the last known facility.

### **2.6.5 Closed Adoption Records**

THIS PROCEDURE IS BASED ON SUBSECTION 453.121, RSMo.

All adopted adults, adoptive parent(s), or legal guardians will be given non-identifying information, if known, regarding the biological parents and siblings of the specific adopted child, who is the subject of the request, upon providing proper identification and, in the instance of an adopted adult request, proof of age (must be age 21 and over).

Non-identifying information includes only a physical description, the nationality, religious background, and medical history of the biological parents and/or sibling(s) contained in Division records. Section 453.121 does not authorize for release any other types of non-identifying information. See definitions for further guidance regarding medical history.

A written request via completion of form CS-50 is required.

Requests for non-identifying information should be referred to the circuit court if the local office is unable to identify that the adopted child, who is the subject of the request, was placed for adoption by the Division.

Release of non-identifying information is permitted on adoptions completed before and after August 13, 1986.



Siblings who were not adopted may not request information about adopted siblings.

For closed adoption records, the Children's Service Worker would:

- Receive request for non-identifying information from adopted adult, adoptive parent(s) or legal guardian. See Children's Services Forms Manual, instructions for CS-50. Request for Release of Non-Identifying Information/Completed Adoptions.

NOTE: The adopted child does not have to be 21 years of age if adoptive parent(s) are requesting non-identifying information.

- Secure proof of identification of individual making request and proof of age, if adopted adult is making the request. See 2.6.4.A for methods of securing proof. Refuse the request if the adopted individual is making the request and is unable to provide proof of being age 21 and over.
- Determine that record exists regarding the adopted adult who is the subject of the request.

Make request of county holding the adoption record if it is determined that the adoption was completed in another county; or

- Refer requestor to circuit court of residence of the adopted child if it is determined that the Division did not place the child.
- Prepare CS-50 with the available non-identifying information.
- Document within ten working days, on CS-50 in the adoptive parent's record, the time, place and person to whom CS-50 was provided and retain copy in the case file.
- Record all activities on the CS-52, and insert all forms, reports and other correspondence in the "Release of Information" section of the adoptive parent(s) case record.

### **2.6.6 Adoption Information Registry**

THIS PROCEDURE IS BASED ON SUBSECTION 453.121, RSMo.

"The Adoption Information Registry, located in Central Office, will accept registrations via the CS-51 from adopted adults or biological parents through the mail or direct delivery in an envelope marked "Confidential."

The adopted adult must be age 21 or over before registration is permitted. Biological parents can register any time following termination of parental rights. When a "match" occurs and both parents have not registered and the other is located, the located parent must file an affidavit authorizing the release of identifying information with the court which granted the adoption or register with the "Adoption Information Registry." If the other biological parent does not register with the "Adoption Information Registry" or does not file an affidavit consenting to the release of identifying information with the court that granted the adoption, no identifying information can be released to any of the registrants.

Before contact can be made with the biological parents involved with adoptions completed or initiated prior to August 13, 1986, the consent of the adoptive parent(s) must be secured.

For adoptions completed after August 13, 1986, the adopted adult must indicate that the adoptive parents have been notified.

The Children's Service Worker shall:

- Receive request for information from biological parents or adopted adult.
- Give CS-51, Registration, Adoption Information Registry, to biological parents or adopted adult with CS-51A, Attachment A (informational sheet describing the registry service).
- Receive request from Central Office to aid in identification of and/or search for other biological parent in the event a "match" has occurred.
- Search Division files for identification of the other biological parent and possible location.
  - Complete confidential notification of other biological parent if identified and located.
  - Provide information regarding option, i.e., registration with the Adoption Information Registry or filing an affidavit with the court which granted the adoption indicating identifying information may be released.

**NOTE: Failure to do one of the above options will prohibit the release of information about any of the registrants.**

- Report outcome of identification and status of biological parent's consent via CS-51 within five days to the Adoption Information Registry in a confidential envelope.

- Record all activities on the CS-52 in the "Release of Information" section of the adoptive parent(s)'s case file within ten days of the point action is completed. Then file all forms, reports and other correspondence in the "Release of Information" section of the adoptive parent(s) case record.

## **2.7 Health Insurance Portability and Accountability Act (HIPAA)**

### **Overview of HIPAA**

The Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, resulted in the establishment of HIPAA Privacy Rule in December of 2000. The HIPAA Privacy Rule is a federal rule designed to protect individuals' medical records and other personal health information. This federal law provides further requirements and restrictions in addition to the confidentiality provisions set out in this chapter.

In the course of business, the Children's Division receives, discloses and utilizes Protected Health Information of employees and clients for a variety of reasons. Employees should exercise care at all times to discuss confidential, sensitive, or personal health information in a manner or place where the discussion is not able to be easily overheard. Measures should be taken to ensure that health information is not accessible to anyone other than the authorized personnel. CD staff will maintain privacy, confidentiality and integrity with regard to protected health information as required by state and federal laws, rules and regulations and professional ethics. Employees found to be in violation of this policy may be subject to disciplinary action up to and including dismissal as well as prosecution in a court of law.

Protected Health Information (PHI) refers to health information that is individually identifiable and created or received by a covered entity, such as Children's Services. PHI is defined as any information relating to past, present or future physical or mental health of an individual; the provision of health care to the individual; or the payment for health care. Individually identifiable health information is health information that identifies or reasonably may be used to identify the individual. Health information that is created or received by the Children's Services is protected under the regulation, including but not limited to the following:

- Name/Address
- Employer
- Names of Relatives
- DOB/SSN
- Telephone number
- DCN/Medicaid number

- Occupation
- Diagnosis
- Hospital/Physician/Psychologist/Therapist evaluations and/or records
- Authorizations/payments to a medical/mental health provider
- Child/family investigations, assessments, service plans
- Child/family contact and progress notes and/or summaries

#### **Major Provisions of HIPAA:**

- Define a “minimum necessary” standard;
- Distinguish between “authorization to disclose” and “accounting for disclosure”;
- Give the individual an opportunity to agree or object to use and disclosure of PHI;
- Require the use of a privacy notice;
- Allow individuals to access PHI;
- Permit individuals to request an amendment of PHI;
- Allow persons to request an accounting of certain disclosures of PHI;
- Establish who has access to PHI;
- Create civil and criminal penalties for violating the HIPAA standards;
- Require workforce members to be trained on and to acknowledge the HIPAA provisions;
- Verify the identity and authority of persons requesting a client’s PHI;
- Allow recipients to request restrictions on the use and disclosure of PHI; and
- Mandate that organizations have a privacy officer.

#### **Key Terms Regarding HIPAA**

- “Covered Entity” – a Health Plan (Insurance Company and HMO’s), a Healthcare Clearinghouse, or a Healthcare Provider that transmits any health information electronically. The Department of Social Services (DSS) administers the

Medicaid Program, which is considered a Health Plan. Consequently, DSS is a “covered entity” and has chosen to designate itself as a “single covered entity”. Therefore, all programs and each Division within DSS are subject to and must comply with HIPPA requirements and privacy rules.

- “Use” – when we use or share information internally, either within our Children’s Services county/circuit, between Children’s Services counties/circuits, or between DSS agencies (such as Children’s Services and Division of Youth Services). We would “use” consumer PHI to make treatment/service decisions, or to make payment decisions, or for other parts of our children’s services operations. For example, we may “use” Protected Health Information to make a decision to request removal of a child from their parents during a sexual abuse investigation. HIPAA does not require staff to obtain disclosure authorizations when PHI information is being used for treatment, payment, or health care operations.
- “Disclose” – when we share information outside the Department of Social Services (which is a covered entity), to an individual, agency, or organization external to us. One example would be when we disclose information to the courts when we are ordered to do so. The court is outside our agency and the sharing of such customer information is not considered in the course of treatment/services, so we are disclosing information to the court. While disclosures to the juvenile courts, law enforcement, and prosecutors now allowable under current policy and law are exempt from HIPAA disclosure requirements as described in subsection 2.7.2., other kinds of disclosures are not exempt such as described in subsection 2.7.3.
- “Psychotherapy notes”— notes recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the individual’s medical record and designated specifically as psychotherapy notes. Psychotherapy notes excludes medications prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date. There should not be an instance during the provision of Children’s Services when such recordings would be designated in a client file as psychotherapy notes.

#### **2.7.1 “Minimum Necessary” Requirements for Sharing Protected Health Information**

Federal regulations provide that staff at all times make a reasonable effort to limit PHI to the minimum necessary to carry out the intended purpose of use, disclosure or request. Consequently, staff must ensure that that PHI is not unnecessarily or inappropriately accessed or disclosed. The following are examples:

- A pharmacy calls to verify a foster child's Medicaid number. The purpose is for providing a service to the child and for billing the state for those services. Giving the provider the child's Medicaid number and current eligibility gives the minimum necessary information and is appropriate. It would be inappropriate to share additional information such as why the child is in foster care or other PHI.
- A Children's Services Worker following confidentiality procedures as outlined in the appropriate Child Welfare Manual sections calls a local food pantry to secure an emergency food order for a family. The worker provides the food pantry with the family members' names, ages, and a brief description that the family is in need because they were recently robbed. The Children's Service Worker does not provide information that the mother is schizophrenic or that the father is currently in outpatient alcohol treatment. Sharing of the mother's diagnosis or father's diagnosis/treatment (both considered PHI) was not necessary to securing an emergency food order (as Protected Health Information is not being shared, a client authorization specifically for release of health information is not necessary).
- A Children's Services Worker is expecting a psychological evaluation of a client he is currently serving and alerts the office clerk to this fact. The office clerk who receives the evaluation in the mail only needs to verify from the name of the client and the worker who currently has that client in his caseload. The caseworker and the person who distributed the mail followed the minimum necessary standard. However, it would have been inappropriate for the clerk to read the evaluation contents.

#### **When "Minimum Necessary" Does Not Apply**

The requirement for disclosing the "Minimum Necessary" information to accomplish the intended purpose does not apply to the following:

- Disclosures to or requests by a health care provider for treatment;
- Uses or disclosures made to the individual;
- Uses or disclosures made pursuant to an authorization (refer to section on Authorizations for Disclosures for Protected Health Information);
- Uses or disclosures that are required by law; and
- Investigations of complaints made to the Secretary of the Department of Health and Human Services and/or compliance reviews conducted by the Department.

#### **2.7.2 Uses and Disclosures of PHI which do not Require Authorization for Disclosure of Health Information**

Staff may use and disclose PHI without a completed Authorization for Disclosure of Health Information by DSS for the purposes of treatment, payment, and healthcare for

an individual. In addition, the following list summarizes other instances in which an authorization to use or disclose PHI is not required from the individual. (Note that program policy may, however, require a standard release of information from the client even in cases where HIPAA does not require a PHI authorization for disclosure).

- To a public health authority (i.e., sharing information with the Missouri Department of Health and Senior Services, which is conducting a public health surveillance, investigation, or intervention);
- To report child abuse/neglect situations, and other situations involving abuse, neglect or domestic violence (if disclosure is allowed by law);
- To the United States Food and Drug Administration under certain circumstances;
- To a health oversight agency that is authorized by law to conduct audits, investigations, inspections and other activities for oversight of health care systems, certain government programs, etc., (i.e., the United States Department of Health and Human Services conducts periodic reviews and audits of the Medicaid program);
- To judicial or administrative proceedings under certain circumstances; (refer to Child Welfare Manual policies and procedures in regard to information shared with the juvenile courts);
- To law enforcement officials as required by law or pursuant to a court order, a court-ordered warrant, or a subpoena or summons issued by a judicial officer; a grand jury subpoena; or an administrative request, such as an administrative summons or a civil investigative demand; for purposes of identifying or locating a suspect, fugitive, material witness, or missing person; or regarding a crime victim;
- To avert a serious threat to health or safety;
- To certain governmental functions such as national security;
- To certain agencies that are government programs providing public benefits (i.e., CD sharing information with the Department of Health and Senior Services or the Department of Mental Health regarding for the intent of securing Community-Based Services treatment for an individual);
- As required by law (refer to Child Welfare Manual policy in regard to information sharing with juvenile courts, law enforcement and prosecutors as defined by statute and state law).

#### **Other Situations That Do Not Require an Authorization for Disclosure of Health Information by DSS**

Use of PHI for treatment, payment or health care operations:



If staff are using PHI to arrange counseling, evaluation, medical exams or other treatment, payment or health care operations for adults or children, a HIPAA authorization for disclosure from the client is not required. (The provider may require an authorization for disclosure to release information back to staff). Examples of when authorizations for disclosures are not required include following situations:

- Releasing the minimum necessary PHI to a Medicaid provider to allow the provider to charge for provided services;
- Making a referral to a CTS provider for treatment;
- Making a referral to a doctor for a SAFE exam;
- Using PHI to determine eligibility for Medicaid or MC+;
- Obtaining medical reports to document domestic violence to establish good cause for not cooperating in child support collections for a Temporary Assistance; claimant.

#### **Children in CD Custody:**

- When Children are in CD custody, staff have the same authority as parents do under HIPAA regulations with regard to disclosure of information.

#### **2.7.3 Uses and Disclosures Requiring Authorizations For Disclosure of Health Information by DSS**

If staff believe it is necessary to disclose PHI for a non-treatment-related purpose for a family member or a child not in our custody, an Authorization for Disclosure of Health Information by DSS is required. All such authorizations obtained from the client must be filed in the client's case file. Two examples are as follows:

Staff have information regarding a father's psychiatric diagnosis of Obsessive-Compulsive Disorder (OCD). The client has severe financial, utility and rent problems. Staff calls a private charitable organization and advises the organization of the client's financial problems to include the immediate need for funds to cover the cost of psychotropic medication to treat his OCD diagnosis. Disclosure of the identifiable medical information (OCD diagnosis and prescription medication information) to the organization violates HIPAA unless the client completed the Authorization for Disclosure of Health Information by DSS. In this example, staff should have obtained the client's authorization or withheld the PHI.

The Children's Service Worker has been providing FCS services to a family. The mother in the family has been diagnosed with depression and is under treatment with a psychiatrist and individual therapist. One of the mother's children, an 8 year old boy, has been tardy 10 times and absent 11 days in the past quarter. The worker has been invited to participate in Crisis Team meeting at the boy's school. During the course of the meeting the team explores possible reasons behind the boy's school attendance



difficulties. Although the worker is aware that the mother's depression is interfering with her ability to get the boy up and ready to catch the school bus, the worker refrains from sharing information regarding the mother's diagnosis and treatment. Disclosure of the medical information (diagnosis of depression and treatment/therapy) violates HIPAA unless the client completed the Authorization for Disclosure of Health Information by DSS.

**NOTE:** The Authorization for Disclosure of Health Information by DSS is not necessary when: (1) Protected Health Information is shared with juvenile courts, law enforcement and prosecutors per current policy and procedures, which are based on existing law; (2) for children who are in CD custody; (3) when Protected Health Information is shared for treatment, payment or health care operations; or (4) shared with other divisions of the Department of Social Services, as all of DSS is considered a "single covered entity".

If it is necessary to disclose PHI in order to protect either the individual or the health and safety of others, CS staff must document to whom information is given, the reason the information was given, and the contact /clearance with supervisory staff.

#### **2.7.4 Client Requests to Restrict the Use and Disclosure of Protected Health Information**

##### **Individual Request for Restriction of PHI**

Clients have the right to request specific restrictions on the use or disclosure of PHI. Clients must file this request in writing by completing a Request for Restriction of Health Information form. Staff must send the completed request through supervisory channels to the CS Privacy Officer.

##### **Agreement or Denial of the Request**

The CS Privacy Officer must receive the written request and determine whether it will be approved. The CS Privacy Officer will consult with the DSS Privacy Officer and provide staff and the client with the final decision. DSS will act on the request no later than 60 days after receipt of the request. DSS may request an extension of 30 days by notifying the client in writing.

- If approved, staff must notify the parties of the change, implement the restriction and ensure that such protected information is easily identifiable in the client's record to avoid possible use or disclosure. One method would be to attach a cover sheet to the PHI, identifying to whom the information may or may not be released.
- If denied, do not implement client's request for the restriction.
- File the original Request for Restriction of Health Information form in the front of the client case file.

While the individual has the right to request any kind of restriction of PHI uses and disclosures, the Division is not required to agree to those restrictions.

### **Termination of Restriction**

Terminate the agreement to a restriction of information as follows:

- The client requests the termination in writing; and
- File the written request for termination of restriction in the front of the case together with the initial request for restriction

### **Emergency Exception**

If DSS has agreed to the restriction, but the individual who requested the restriction is in need of emergency treatment, and the restricted PHI is needed to provide the emergency treatment, staff may disclose that PHI to a health care provider to provide such treatment. If such PHI is disclosed in an emergency situation, the facility must require that the health care provider to whom the information was disclosed to not further use or disclose that PHI.

## **2.7.5 Amendment of Protected Health Information**

A client who has, is receiving, or was denied services, a parent of a minor, and/or a personal representative or legal guardian as relevant to their representation, may request an amendment or correction of health information. Additionally, a personal representative or legal guardian must have written authorization from the client to amend or correct PHI. Individuals making this type of request should complete the Request for Amendment/Correction of Protected Health Information form to record the request, unless the information involves minor discrepancies, as described below.

### **Minor Discrepancies**

For minor discrepancies such as typing errors, misspelled names, wrong dates, etc., staff may correct the entry by drawing a single line through the error, adding a note that explains the error, dating it, initialing it, and by making the correction as close as possible to the original entry in the record. In this situation, the individual is not required to fill out the Request for Amendment/Correction of Protected Health Information form.

Additions to the file should not be treated as amendments. For example, the name of a client's new primary physician would not be considered an amendment.

### **Other Requests**

All other requests for amendment of PHI must be in writing and include the reason to support the amendment. The request should include any documentation that explains or

verifies the incorrect or incomplete information. As noted above, the client should be instructed to complete the Request for Amendment/Correction of Protected Health Information form to record this request. Immediately forward the form and all documentation to the CS Privacy Officer. The CS Privacy Officer will act on the request no later than 60 days after receipt of the request. The CS Privacy Officer may request an extension of 30 days by notifying the client in writing.

If the amendment request is accepted, staff must upon notification by the CS Privacy Officer:

- Insert the amendment or link the amendment to the site of the information that is the subject of the request for amendment, and then document the change in the same section of the record as the original information; and
- Inform the individual that the amendment is accepted; and
- Obtain the authorization of the individual to notify all relevant persons or entities with whom the amendment needs to be shared; and
- Within 60 days, make reasonable efforts to provide the amendment to the persons identified by the client and any persons that staff knows that have been provided the PHI that is the subject of the amendment and who may have relied on or could possibly rely on the information to the detriment of the client.

### **Denying Requests for Amendment of Protected Health Information**

The request for amendment of the PHI may be denied if: (1) staff did not create the information (however, if the individual can provide reasonable proof that the person or entity that created the information is no longer available to make the amendment, and the request is not denied on other grounds, the amendment is permissible); (2) The information is not part of the medical information kept in the client's case record; (3) The information is not part of the information that the client would be permitted to inspect and copy; and (4) The information is accurate and complete.

If the amendment request is denied, the CS Privacy officer notifies the client and staff. The denial notice explains: 1) the reason for the denial; 2) the person's right to submit a written statement disagreeing with the denial and how the individual may file such a statement; 3) the name, title, address, and telephone number of the DSS Privacy Officer to whom a statement of disagreement should be addressed; 4) the steps to file a complaint with the Secretary of the Department of Health and Human Services; 5) a statement that if the client does not submit a statement of disagreement, the client may request that DSS provide the Request for Amendment/Correction of Protected Health Information and the denial notice with any future disclosures of PHI.

### **Client Disagrees With the Denial**

The individual has the right to submit a written statement disagreeing with the denial of all or part of a requested amendment and the basis for the disagreement. This

statement of disagreement shall be limited to one page and be submitted to the DSS Privacy Officer. DSS will complete a written response to the statement of disagreement and send it the client and staff.

Staff must identify the record of PHI that is the subject of the disputed amendment and append or link the request for an amendment, the denial of the request, the individual's statement of disagreement, if any, and DSS' response statement if any. If the client has submitted a statement of disagreement, staff must include the documents listed in the prior sentence, or an accurate summary of the information, with any subsequent disclosure of the PHI to which the disagreement relates.

If the person has not submitted a written statement of disagreement, DSS must include the person's request for amendment and its denial, or an accurate summary of the information, with any subsequent disclosure of PHI only if the client has requested it.

#### **2.7.6 Client's Right to Access their Health Information on File in Children's Services Records**

Individuals may have access to and obtain a copy of their PHI. A client who has, is receiving, or was denied services, a parent of a minor, and/or a personal representative or legal guardian as relevant to their representation, must request in writing access to inspect, or receive copies of PHI. Additionally, a personal representative or legal guardian must have written authorization from the client to access PHI. Use the Individual's Request for Access to Protected Health Information for the client's request. This form should be used anytime a client is requesting access to and/or a copy of their file and the file has any Protected Health Information.

#### **Staff Assistance to the Individual**

Staff may assist the individual in initiating this process. For example, the client may want a copy of his or her doctor's report from their Children's Services case file, but he or she may not remember the examination date. Provide the date from the case record to help the person.

#### **Approving the Request for Client Access to PHI**

Individuals and/or their attorneys or representatives frequently request access to specific Protected Health Information in files, such as a copy of their counseling reports. At other times, the individual or representative may be requesting access to their entire case file or to their CA/N investigation record. Staff should refer to policies and procedures in the Child Welfare Manual on how to respond to these requests (see Child Welfare Manual Section 5.2.4). However, as many case files and CA/N investigation records contain PHI, if staff ascertain that any of the information in the file could be PHI, staff should also have the individual and/or personal representative fill out the Individual's Request for Access to Protected Health Information. Staff should also verify that the personal representative requesting information is truly representing the individual.

The Request form could be completed at the time the individual comes in to review their file or to pick up copies of their information, or the form could be mailed to the individual and returned to staff. Copies of the Individual's Request for Access to Protected Health Information should be retained in the file.

If after review staff approve the request, staff shall ensure access in a timely manner and arrange for a mutually convenient time and place for the client to inspect the PHI or obtain copies, unless access in another format has been requested by the client and agreed to by staff as (see Requested Format below). Charge the same per page copying fee that CD uses to reimburse medical providers. Do not charge any search or retrieval fees. The client's agreement to any costs is confirmed by the person's checking the appropriate box on the Individual's Request for Access to Protected Health Information form. Any requests for additional accommodations shall be sent or given in writing to the CS Privacy Officer.

### **Providing a Summary of the PHI**

If it is acceptable after discussion with the client, a summary of the PHI may be used. The client's agreement to a summary shall be documented in writing by checking the appropriate box in the Individual's Request for Access to Protected Health Information form. Staff should then forward to the DSS Privacy Officer the Individual's Request for Access to Protected Health Information form, copies of the requested information and a cover memorandum. Advise the DSS Privacy Officer that you recommend that the client receive the requested summary.

### **Requested Format**

The request is processed in the format requested (i.e., hard paper copy, microfiche, computer disk, etc.), if possible, and in a timely consistent manner according to established timeframes but not more than 30 days after receipt of the request. If the record cannot be accessed within the 30 days, the timeframe may be extended once for no more than an additional 30 days with notification in writing to the individual outlining reasons for the delay and the date the request will be concluded.

### **Request Denials**

If after review of the request, staff believe that a request should be denied, the request together with appropriate documentation shall be forwarded to the CS Privacy Officer for review, decision, and response to the client.

### **Denials Without a Right to Review**

The CS Privacy Officer, in cooperation with CS staff, may deny requests for access to protected health information without a right to review in the following situations:

- If the information conforms to one of the following categories: psychotherapy notes; information compiled for use in a civil, criminal or administrative action or proceeding;

- If the client is participating in a research related treatment and has agreed to the denial of access to records for the duration of the study;
- If access is otherwise precluded by law;
- If the information was obtained from someone other than a health care provider under a promise of confidentiality and the access requested would be reasonably likely to reveal the source of the information; and
- If DSS has been provided a copy of a court order from a court of competent jurisdiction, which limits the release or use of PHI.

### **Psychotherapy Notes**

Psychotherapy notes have special protections under HIPAA in terms of releasing such notes to the individual. As noted earlier, psychotherapy notes are defined as “notes recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the individual’s medical record.” Case narratives compiled by Children’s Services case managers/service workers are an integral part of the case record and do not meet the definition for psychotherapy notes.

Case records may, however, contain psychotherapy notes that originated from a mental health professional. Psychotherapy notes are a distinct and separate category from counseling reports, counseling summaries or psychological evaluations. Psychotherapy notes are exempt from individual access. If an individual requests a document that is labeled psychotherapy notes do not release that specific information and submit the request to the CS Privacy Officer. The CS Privacy Officer will review the request and notify staff of the decision. Other information should be released to the individual per the policies and procedures of the Child Welfare Manual upon execution of the signed Individual’s Request for Access to Protected Health Information.

### **Denials With a Right to Review**

Although, the CS Privacy Officer, in cooperation with CS staff, may deny requests for access to protected health information, the client does have a right to review of this denial in the following situations:

- A licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to endanger the life or physical safety of the individual or another person;
- The Protected Health Information makes reference to another person and a licensed health care professional has determined that the access requested is reasonably likely to cause substantial harm to such other person; or

- The request for access is made by the individual's personal representative and a licensed health care professional has determined that the provision of access to such personal representative is reasonably likely to cause substantial harm to the individual or another person.

If a client is denied access to all or part of their PHI contained in the CS case file, they have a right to appeal the denial decision. If the client or personal representative requests a review of the denial DSS has designated a licensed health care professional, who was not involved with the initial decision to deny access, to review the decision. Denial reviews will be referred by the DSS Privacy Officer to a designated departmental licensed health care professional for completion of the review. Such denial reviews shall under no circumstances be completed by any other licensed health care professional. Staff must complete the following in processing a request for review of a denial to access PHI:

- The appeal shall be submitted in writing to the DSS Privacy Officer. The DSS Privacy Officer will then designate a licensed health care professional to review the denial; and
- The designated licensed health care professional who did not participate in the original decision to deny access shall review the record and the request for access to the client's record;
  - a) If the reviewer determines that the initial denial was appropriate, the DSS Privacy Officer notifies in writing that the review resulted in another denial of access. The notice includes the reasons for denial and describes the process the individual may use to make a complaint to the Secretary of the Department of Health and Human Services.
  - b) If the denial was not appropriate, the licensed health care professional who acts as the reviewer shall refer the request to the DSS Privacy Officer for action. The Privacy Officer may provide this PHI to the individual or direct staff to provide it.
  - c) If access is denied to any portion of the PHI, access must still be granted to those portions of the PHI that are not restricted.

### **Denial of Access**

If after review, CS denies access to PHI in whole or in part, CS may as directed:

- Make other PHI information accessible to the individual after excluding the denied PHI; or
- If the information requested is not maintained by CS and staff is aware of the location of such information, staff may inform the individual where to direct his or her request. Make other PHI information accessible to the individual after excluding request.



### **Release of PHI of a Deceased Client**

- The PHI of a deceased client may only be released via a Probate Court order from the County Circuit Court where the deceased resided or from another Probate Court in the State of Missouri. In the case of a child victim who is the reported subject of abuse/neglect, information should be released per state law and statute with the juvenile court, law enforcement, prosecutors and members of the Child Fatality Team.
- Other requests for information should be referred to the CS Privacy Officer.

### **2.7.7 Accounting Disclosures of Protected Health Information**

Staff must account for all disclosures of PHI made by CS in the six years prior to the date on which the accounting is requested by the client, effective April 14, 2003. However, no tracking or accounting is required in the following exceptions:

- 1) Disclosures made to carry out treatment, payment, and healthcare operations that are not required by law. This would include protected health information disclosures made to the members of the multi-disciplinary treatment team and Family Support Team (i.e., school personnel, counselors, day-care staff, para-professionals, etc.) who are responsible for decision making and carrying out treatment in regard to a child who is in our custody unless that disclosure is required by law. Note that in general all disclosures about protected health information made to the juvenile court, Guardian-ad-Litem, CASA, law enforcement, prosecutors and courts are broadly required by law and, accordingly, do have to be tracked—see section below on when and how to use the PHI Disclosure Tracking Log;
- 2) Disclosures made to the individual client about their own PHI;
- 3) Disclosures made with an authorization from the individual;
- 4) For national security or intelligence purposes;
- 5) To correctional institutions;
- 6) As part of a limited data set;
- 7) Disclosures made for DSS operating purposes (i.e., staff are working with the Division of Medical Services to coordinate Medicaid eligibility);
- 8) Incidental to a use or disclosure otherwise permitted or required;
- 9) That occurred prior to the compliance date of April 14, 2003; and
- 10) Disclosures of protected health information made to foster parents, who are considered extensions of staff;



Use the PHI Disclosure Tracking Log form to record all disclosures unless exempted above. The employee releasing the information must immediately update this form upon the disclosure. File the PHI Disclosure Tracking Log in the front of the client case record. The log must be maintained for at least six years from the date of the most recent disclosure. Disclosures that must be accounted for on the log include:

- 1) To public health authorities as required by law (i.e., birth, death, and required disease reporting);
- 2) To avert a serious threat to health or safety of a person or the public
- 3) To the Food and Drug Administration (i.e., adverse events, product defects, tracking product recalls, post marketing surveillance);
- 4) To health oversight agencies for oversight activities authorized by law;
- 5) To law enforcement officials as required by law or pursuant to a court order, or subpoena, or administrative request; for purposes of identifying or locating a suspect, fugitive, material witness, or missing person; or regarding a crime victim;
- 6) Information about victims of abuse, neglect, or domestic violence disclosed to a government authority to the extent the disclosure is required by law; this would include reports of death made by staff to Child Fatality Review panel (210.115);
- 7) For some research purposes;
- 8) To governmental functions (i.e., national security, military command authority, veteran's information); and
- 9) As otherwise required by law, including:
  - Referrals for children exposed to substance abuse/Newborn Assessments to Department of Health where referral discloses Protected Health Information —191.737
  - Reports of child abuse/neglect containing PHI disclosed to law enforcement which Division personnel determine merit an investigation, or, which if true, would constitute suspected violation of law -210.145 (3)
  - Information regarding status of an investigation containing Protected Health Information provided to the public school district liaison - 210.145 (4)
  - Disclosures (records/files/written reports and verbal reports) of records containing Protected Health Information for administrative review by the child abuse and neglect review board—210.153

- Records containing PHI assessed by grand jury, juvenile officer, prosecuting attorney, law enforcement officer, juvenile court or other court conducting abuse or neglect or child protective proceedings and other federal state and local government entities, or any agent of such entity with a need for such information in order to carry out its responsibilities under law, multidisciplinary agency or physician or physician's designee who is providing services, —210.150 - (6)
- Written reports (CS-1) containing PHI about the status of a child required every six months disclosed to the juvenile court—210.720
- Disclosure of Protected Health Information by staff to GAL or CASA of all reports and to fully inform of all aspects (records/files/written and verbal reports) of the case of which staff have knowledge or belief—210.160
- Disclosure of Protected Health Information (records/files/written and verbal reports) to Child Fatality Review Panel to investigate deaths—210.194
- Disclosure of record (records/files/written and verbal reports) containing PHI to ICPC—210.620
- Reports (records/files/written and verbal reports) disclosed to the court containing PHI in permanency hearings —210.720
- Disclosure (records/files/written or verbal reports) of information containing PHI pursuant to a subpoena or court order

NOTE: Many exchanges of information whether made in writing or verbally while speaking with juvenile court staff, GAL's, and law enforcement authorities will contain Protected Health Information. These disclosures of PHI do require logging and providing an accounting upon request by the parent or personal representative of a child, including a child who is in CD custody.

Individuals requesting information about disclosures as described above should complete the Request for an Accounting of Disclosures to request an accounting. Upon receipt of this form, send a copy of the PHI Disclosure Tracking Log along with the request form to the CS Privacy Officer who will contact DSS Privacy officer. If staff determines that providing copies of the disclosed information or other information may be helpful to the DSS Privacy Officer, include with the log sheet and any necessary summary. The DSS Privacy Officer will review all disclosure logs pertaining to the client held by any of the Divisions within DSS. Once review is completed, the DSS Privacy Officer will provide the accounting of disclosure to the client.

NOTE: Once the construction of the DSS PHI Disclosure Tracking database on the DSS Intranet is completed, all disclosures logged per instructions in above section must be entered into the data base within 5 days of the disclosure.

DSS must provide an accounting no later than 60 days after receipt of the Request for an Accounting of Disclosures form. The deadline can be expended up to 30 days. The first accounting is without charge to the individual in any 12-month period.

### **2.7.8 Privacy Notices**

CD must provide a privacy notice to individuals as of April 14, 2003, and thereafter by:

- Providing a copy upon an individual's request;
- Providing a copy at the time a person applies;
- Providing a copy at the time CS staff conduct a CA/N investigation, assessment or referral;
- Issuing a copy within 60 days of a material revision of the notice;
- posting the notice in each office in a clear and prominent location;
- Making the notice available at each office so an individual can request and obtain a copy;
- Notifying clients no less frequently than once every three years of the availability of the notice and how to obtain a copy;
- Posting the notice on the agency's web site; and
- Emailing a copy upon an individual's request for an electronic notice.

### **2.7.9 No Intimidation or Retaliation**

CD employees may not intimidate, threaten, coerce, discriminate against, or take other retaliatory action against any individual or other person for exercising his/her rights under HIPAA or for participating in a process established by HIPAA. CD staff will comply with provisions of the Whistleblower Law (Department of Social Services policy 2-100), which states that supervisors and managers are not allowed to prohibit employees from discussing agency operations with members of the legislature or the state auditor.

### **2.7.10 Staff Access to Protected Health Information and Acknowledgement of Privacy Requirements**

Staff are granted access to PHI in accordance with state and federal law and other DSS/Children's Services policies/procedures. Such access is limited to the minimum necessary to accomplish the purpose of any use or disclosure. Staff must protect the privacy of individually identifiable health information, must recognize the importance of such confidentiality provisions, and affirmatively acknowledge those guidelines.

### **Staff Access**

- Employees shall be granted access to PHI in accordance with state and federal law and other relevant DSS/CD operating procedures. Such access shall be limited to the minimum necessary amount of protected health information to accomplish the purpose of any requested use or disclosure of PHI.
- Each office shall establish a procedure for how its workforce members are to physically access PHI in medical records (i.e., how to sign records in and out and under what conditions, etc.).

#### **2.7.11 Duty to Mitigate**

When CD learns that an employee or business has used or disclosed PHI in violation of HIPAA regulations, CD will take actions appropriate to prevent further inappropriate uses or disclosures and pursue any feasible actions to lessen the harmful effects of any such violations.

#### **2.7.12 Emergency Policy**

Provisions of this section will be coordinated between divisional privacy officers and the DSS privacy officer. In the event of an emergency that renders a local CD office incapable of providing an individual or their representative with information to which the individual is entitled under the requirements of HIPAA, the individual will be given a telephone number or web site address where said individual may obtain the required information upon proper verification. In the event of such an emergency, information will be released through a predetermined telephone number or via electronic media. No information will be released from a local office until it is verified that all information systems within that office are HIPAA compliant.

#### **2.7.13 Retention/Destruction of Protected Health Information**

Documentation recording disclosures of PHI (PHI Disclosure Tracking Log) should be retained for a period of six years. Records involved in any open investigation, audit or litigation should not be destroyed/disposed of. If notification is received that any of the above situations have occurred or there is the potential for such, the record retentions shall be suspended for these records until such time as the situation has been resolved. Divisions with federal regulations that supersede HIPAA should include retention information in their divisional procedures.

Destruction/disposal of protected health information will be carried out in accordance with federal and state law and divisional policies. This may include any record of client health information, regardless of medium or characteristic that can be retrieved at any time. This includes all original client records, documents, papers, letters, billing statements, x-rays, films, cards, photographs, sound and video recordings, microfilm,

magnetic tape, electronic media, and other information recording media, regardless of physical form or characteristic, that are generated and/or received in connection with transacting client care or business.

Records scheduled for destruction/disposal should be secured against unauthorized or inappropriate access until the destruction/disposal of client health information is complete. A contract between DSS and a business associate should provide that, upon termination of the contract, the business associate will return or destroy/dispose of all patient health information. If such return or destruction/disposal is not feasible, the contract must limit the use and disclosure of the information to the purposes that prevent its return or destruction/disposal.

Health information media should be destroyed/disposed of using a method that ensures the health information cannot be recovered or reconstructed. Appropriate methods for destroying/disposing of media are outlined in Appendix N.

#### **2.7.14 Other General Documentation Requirements**

In addition to the requirements above, CD staff should maintain documentation as listed below. Copies of such information should be forwarded to the DSS Privacy Officer.

- Any signed Authorization for Disclosure of Health Information by DSS;
- Authorization for access to files by personal representatives;
- All complaints received, and their disposition;
- Any sanctions to employees that are applied as a result of non-compliance; and
- Any use or disclosure of protected health information for research without the individual authorization.

#### **2.7.15 Complaint Process**

If an individual believes that Children's Services and/or its representative is not complying with the requirements of HIPAA, (s)he may file a complaint with one or both of the following:

- DSS Complaint Officer; PO Box 1527; Jefferson City, MO 65102-1527
- Secretary of the Department of Health and Human Services (DHHS); 200 Independence Avenue, SW; Washington, DC 20201.

The Health Insurance Portability and Accountability Act Complaint form will be provided to the complainant by the office where the complaint is lodged. The Complaint Officer will contact the facility from which the complaint originated and complete an investigation within thirty (30) days from the date it is received by the department. Once completed,

the Complaint Officer will issue a response letter to the complainant with the determination and any indicated corrective measures. If the complainant is not satisfied with possible resolutions, the Complaint Officer will provide information regarding the process of filing a complaint with Secretary of DHHS.

#### **2.7.16 Workforce Training**

All members of the Children's Services workforce must be trained on policies and procedures with respect to PHI in accordance with DSS/CD policy by mandatory participation in HIPAA Privacy Training. As foster family care providers are considered an extension of the Children's Services workforce, they also must receive such training.

#### **2.7.17 Sanctions**

DSS employees who fail to comply with the privacy policies and procedures of this policy will be subject to disciplinary actions up to and including dismissal as well as prosecution in a court of law. Disciplinary actions will become part of the employee's personnel record.

MEMORANDA HISTORY: CS03-07; CD04-79